

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket 96-45
Federal-State Board on)
Universal Service)

**COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS
SERVICES ON THE JOINT BOARD'S RECOMMENDED DECISION**

The Association for Local Telecommunications Services, ("ALTS"), pursuant to Public Notice DA 96 1891, released November 18, 1996, hereby submits its comments on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Recommended Decision"). Although many important issues remain to be resolved, the members of ALTS are generally encouraged by the progress and recommendations made by the Joint Board.

ALTS' greatest concern at this time is that the Commission take care to ensure the rules and procedures it ultimately adopts are consistent with the principles articulated in the Commission's initial Notice of Proposed Rulemaking and Establishment of a Joint Board:

"The method we ultimately adopt should be as simple to administer as possible, technology neutral, and designed to identify the minimum subsidy required to achieve the statutory goal[s] It should be equitable and non-discriminatory in the burden that it imposes upon contributors, and its distribution procedures should be direct, explicit and specific."¹

¹ Notice of Proposed Rulemaking at 27 (emphasis added).

While the Joint Board appears serious about identifying the minimum subsidy necessary to achieve the statutory goals (for example, the recommendation that the benchmark used for calculating support be based upon average revenues per line rather than average rates, and the recommendation that support be available only for a connection to the subscriber's principal residence), ALTS remains concerned that other recommendations, described below, may be inconsistent with its articulated goals and may result in a total Universal Service fund that is larger than necessary to accomplish the goals of Section 254. This should be of concern to all telecommunications providers and is heightened by the recent actions of states and localities that are attempting to raise significant monies from competitive carriers in the name of universal service. The Commission must be vigilant that monies collected in the name of universal service are limited to the provision of service to persons who would not otherwise be able to afford service.

**I. ALTS MEMBERS HAVE A VITAL INTEREST
IN UNIVERSAL SERVICE ISSUES.**

ALTS is the non-profit national trade organization representing facilities-based competitive providers of local telecommunications services. ALTS' membership includes over thirty providers of competitive access and local exchange services that deploy innovative technologies in many metropolitan and suburban areas across the country. The members of ALTS have consistently urged Congress and the Commission to take whatever

actions necessary to ensure the competitive provision of local service. The best way to ensure universal service to those customers previously bound financially to the incumbents is to provide options and choice to them.

The Telecommunications Act of 1996 ("1996 Act")² significantly changes the rights and duties of facilities-based competitive providers of local exchange services. For the first time, the members of ALTS will be eligible to receive subsidies from the Universal Service Fund and will contribute directly to it. Therefore, as ALTS has argued previously, its members have a vital interest in ensuring that the collection and distribution of subsidy monies be handled in a competitively neutral manner, and that all universal service programs are carefully quantified, controlled, targeted and explicitly linked to the provision of service for those who might not otherwise be able to afford service. All of ALTS' comments on the specific recommendations made by the Joint Board reflect those overriding principles.

II. ALTS SUPPORTS THE JOINT BOARD RECOMMENDATION THAT THE COMMISSION ADD THE ADDITIONAL PRINCIPLE OF "COMPETITIVE NEUTRALITY" TO THE PRINCIPLES LISTED IN THE STATUTE WHEN ADOPTING AND APPLYING UNIVERSAL SERVICE RULES AND POLICIES.

As the Joint Board noted in its recommended decision, the 1996 Act lists a number of principles that must guide the Commission in revising the Universal Service programs. At the same time, however, Congress allowed the Commission to adopt "such other principles as the Joint Board and the Commission

² Pub. L. No. 104-104, 110 Stat. 56.

determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the Act." In its initial comments ALTS and other commenters urged the Joint Board to adopt the additional principle of competitive neutrality in all aspects of Universal Service funding, distribution and administration.

Based upon the urging of the various comments, the Joint Board has recommended that the Commission articulate an additional principle to guide its deliberations. The Joint Board recommends that the Commission adopt a principle articulated as:

"COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be applied in a competitively neutral manner."³

The Recommended Decision explains that the concept of competitive neutrality encompasses the concept of technological neutrality, and also its intention that competitive neutrality be applied in both the collection and distribution of funds.

ALTS agrees that the Recommended Decision has taken an appropriate first step on this issue, but ALTS submits that the principle needs to be broadened to include, for example, the concept that the administrator of any universal service program must also be competitively neutral, and that the rules and regulations themselves, not just the application of the rules and regulations must be competitively neutral. Thus, ALTS advocates

³ Recommended Decision at para. 23.

a more comprehensive wording for the competitive neutrality principle:

"COMPETITIVE NEUTRALITY -- All rules and policies relating to Universal Service must be competitively neutral and must be administered by a competitively neutral body with no corporate or other connection to any carrier."

Such a formulation is consistent with thrust of the entire Joint Board Recommended Decision, and only makes more explicit what ALTS believes to be already implied in the Joint Board's proposal.

III. THERE IS NO NEED FOR THE COMMISSION TO EXTEND SUPPORT FOR SINGLE-LINE BUSINESSES.

The Joint Board has recommended that the Commission make available Universal Service support for services provided to residential customers on a single connection to a subscriber's principal residence and to single-line businesses in high cost areas. The Joint Board's recommendation relating to single-connection businesses was based upon the assertion that in high cost areas the price of telephone service may be prohibitive for small companies. ALTS respectfully suggests that there is no evidence on the record that the single-line businesses are in need of Universal Service support. It seems almost inconceivable that there would be many businesses for whom the cost of basic telephone service would be prohibitive, especially considering that the cost is a deductible business expense and the value, for a small business, is so high.

There simply is no evidence that without Universal Service support small businesses in high cost, rural areas would refrain from purchasing basic telephone service. Unless and until such evidence is developed, only single line residential subscribers should be eligible for support.

IV. THE COMMISSION SHOULD ADOPT THE JOINT BOARD'S RECOMMENDATION THAT THE PROPER MEASURE OF "COST" FOR PURPOSES OF CALCULATING UNIVERSAL SERVICE SUPPORT IS THE FORWARD-LOOKING ECONOMIC COST OF DEVELOPING AND OPERATING THE NETWORK FACILITY AND FUNCTIONS USED TO PROVIDE SUPPORTED SERVICES.

The Joint Board has recommended that the Commission use forward looking economic costs to provide services supported under section 254(c)(1). For the reasons articulated by the Joint Board, ALTS strongly supports the recommendation.

In its initial comments in this proceeding ALTS argued that any subsidy must be delinked from incumbent local exchange carrier embedded costs or any "revenue requirement." It is clear that the intent of the Congress in enacting Section 254 was to aid consumers who, either because of their income or because they live in an area with particularly high telecommunications costs, would not otherwise be able to afford service. The universal service provisions of the '96 Act are not intended to protect incumbent telephone companies from the consequences of imprudent investment. Nor could Congress logically have sought to do so when the entire thrust of the '96 Act is to encourage facilities-based competition.

V. **EITHER OF THE PROXY MODELS CURRENTLY BEFORE THE COMMISSION WOULD NEED REFINEMENTS PRIOR TO ADOPTION BY THE COMMISSION ALTHOUGH THE HATFIELD MODEL IS GENERALLY PREFERABLE TO THE BENCHMARK COST MODEL.**

The Joint Board found that "[f]or the purposes of administering a national universal service system, proxy models are the most efficient method for determining forward-looking costs, and provide other benefits, such as the ability to determine costs at smaller geographic levels than would be practical using the existing cost accounting system." Recommended Decision at para. 270. At the same time the Joint Board found that none of the proxy models submitted to the Board should be used in their present form. Instead, the Joint Board recommended that the Joint Board staff continue its work to develop an appropriate model by May 8, 1997.

ALTS agrees with the Joint Board that a properly developed proxy model is probably the best means of determining forward looking economic costs for the purposes of determining the Universal Service subsidy amount. We also agree with the Joint Board, however, that none of the proxy models that have been put forth is sufficient at this time. From a preliminary analysis ALTS believes that the proxy model with the most promise is the Hatfield model. At the same time, however, a number of refinements would have to be made to that model.

The Recommended Decision lists eight criteria that the Commission should use to evaluate the reasonableness of any proxy

model. ALTS generally supports the criteria listed with one critical caveat. The fifth criteria states that

the model should estimate the cost of providing service for all businesses and households within a geographic region. This includes the provision of multiline business services. Such inclusion allows the models to reflect the economics of scale associated with the provision of these services. (para. 277)

ALTS agrees with this criteria if the following principle is also adopted: any model must reflect only the costs associated with the revenues against which they will be measured. Ideally, this means the model should reflect only the costs of the services covered by universal service. Because ALTS recognizes that the proposed proxy models do not (and perhaps could not) separate the costs of the services for which Universal Services support will be available from other services (e.g. custom calling services) ALTS supports the tentative conclusion of the Joint Board to instead include average revenues per line rather than basic service revenues in determining the benchmark against which costs will be considered. The average exchange price in the United States is in the \$20 range. However, residential bills, on average, are approximately twice that amount.⁴ Thus, if the Commission is using an avoidable cost approach to determining the Universal Service requirement, it should consider the total amount of revenues that would be foregone if service were not provided.

⁴ SBC Warburg, Inc. U.S. Telecommunications Quarterly (Nov. 1996).

In addition, as noted in the Recommended Decision, both the Hatfield and Benchmark Cost Models include the cost of the facilities used to provide all services. As the Recommended Decision notes, "[a] revenue per line benchmark, therefore, would be consistent with the cost estimation process used to determine the cost of service in high cost support areas."⁵

**VI. THE COMMISSION SHOULD BASE THE FUNDING OF ALL
UNIVERSAL SERVICE PROGRAMS ON INTER AND
INTRASTATE TELECOMMUNICATIONS REVENUES**

In addressing the revenue base for assessing contributions, the Joint Board made a recommendation only with respect to support for schools and libraries and rural health care providers. For those programs, the Joint Board recommended basing contributions on both inter and intrastate revenues. With respect to other programs, however, the Joint Board recommended only that the Commission seek additional information.

The Recommended Decision's stated reason for its different treatment of the various programs is that its recommendations on the schools and libraries discount mechanism is more certain,

⁵ Alternatively, if the total revenues are not considered, only the costs of providing the functions covered by universal service should be included in any cost model, i.e., voice grade access to the public switched network, with the ability to place and receive calls, touch-tone or dual tone multi-frequency signaling (DTMF) or its functional equivalent, single-party service, access to emergency services, access to operator services, access to interexchange services and access to directory services. The point here is that whatever costs are included in the cost model must be reflective of the revenues considered in calculating the benchmark.

especially with respect to the identification of costs, than the mechanism for high cost and insular areas. The Joint Board thus concluded that "the decision as to whether intrastate revenues should be used to support the high cost and low income assistance programs should be coordinated with the establishment of the scope and magnitude of the proxy-based fund, as well as with state universal service support mechanisms." Recommended Decision at para. 817.⁶

ALTS appreciates the Joint Board's caution in wishing to defer its decision on cost recovery until it had a more specific quantification of costs. But ALTS respectfully suggests that caution cannot be allowed to override statutory intent or sound policy. As shown below, Section 254 of the 1996 Act contains no language limiting recovery of any universal service goal to only the interstate jurisdiction. Indeed, there would be little sense in Congress referring such a matter to a multi-jurisdictional panel if only one jurisdiction were intended to bear the costs of

⁶ Specifically, the Joint Board recommended that the Commission seek additional information and parties' comment on:

"whether the intrastate nature of the services supported by the high cost and low income assistance programs should have a bearing on the revenue base for assessing fund . . . the ability to separately identify intrastate and interstate revenues in the evolving telecommunications market where services typically associated with particular jurisdictions are likely to be packaged together, . . . and whether carriers will have an incentive to shift revenues between jurisdictions to avoid universal service contributions." Recommended Decision at para 822.

a particular goal. Accordingly, the Commission should adopt the principle that all contributions to universal service programs should be based on both the inter and intrastate revenues of the applicable carriers.⁷

There is simply no reason why the contribution sources providing support to schools and libraries should be any different from the contribution sources providing support for high cost areas and low income consumers. The fact that the total amount of monies needed to fund the subsidy for high cost areas and low income consumers is not known at this time should not be determinative of the issue of the appropriate revenue base for assessing contributions.⁸

There are three principal reasons why the Commission should use the inter and intra state revenues as a base for all universal service contributions. First, use of only interstate

⁷ There is no legal reason why the Commission could not base the contribution on both interstate and intrastate revenues of a carrier providing interstate services. The Commission would not be asserting jurisdiction over any carrier over which it would not otherwise have jurisdiction and no issue of Commission jurisdiction over intrastate rates would be raised by such action.

⁸ As Commissioner Chong correctly noted in her separate opinion, the Joint Board wandered far outside its authority in recommending that the Commission make a downward adjustment in the SLC cap should it decide to include intrastate revenue in the base for determining contributions. Given the Joint Board's express statement that it could not determine whether recovery of loop costs via the CCL rate element constitutes a subsidy (§ 774), the Joint Board plainly had no authority to allocate the "benefits" of any CCL reduction to SLC reduction -- or to any other purpose, for that matter.

revenues would violate the principle of competitive neutrality. While ALTS believes that the Joint Board's concern over a carrier's ability to shift revenues between jurisdictions may be misplaced, there can be no disputing that many of the larger carriers that provide interstate service, and are thus interstate carriers for the purpose of determining whether they are subject to the requirement to contribute to universal service funding obtain a large percentage of their revenues from intrastate services. Obvious examples are the ILECs. It would not be competitively neutral for a large ILEC to base its contribution to a Universal Service fund only on its interstate revenues, which generally is much less than 50% of its total revenues, when some of its competitors may derive a much larger portion of their revenues from interstate telecommunications services.

While the statute does not create any linkage between the jurisdictional nature of a subsidized service and the source of its subsidy, the fact a majority of the services supported by Universal Service will be intrastate in nature underscores the illogic of restricting contributions to interstate revenues. There is no reason to allow carriers whose business is primarily intrastate to pay a smaller share of Universal Service support going to primarily intrastate services.

It also makes sense as a practical matter to base contributions on as large a revenue base as possible. While the total amount of Universal Service subsidy cannot be determined at

this time, some of the proposals have total programs approaching or exceeding ten billion dollars. The Commission must, therefore, recognize that the revenue base for contributions will need to be as large as the law permits.

Finally, the administration and collection of revenues would be much easier if they were based on all revenues rather than just interstate revenues. This is particularly true if some of the Universal Service programs, as recommended by the Joint Board, base contributions on both inter and intrastate revenues. There has been much discussion of late about the possibility of carriers no longer being able to determine whether revenues are interstate or intrastate. Mobile communications services, like cellular, for example, make it more difficult to determine the nature of the communications. While it probably is possible today for most carriers to determine which revenues are inter or intrastate in nature, this may not always be true. In any event, for many of the smaller carriers there may be no independent need to separate or determine inter versus intrastate revenues. The Commission should not create such a need solely for Universal Service purposes.

VII. THE COMMISSION MUST MAKE IT CLEAR THAT SCHOOLS AND LIBRARIES ARE ALLOWED TO CHOOSE THEIR TELECOMMUNICATIONS PROVIDER FROM ANY CARRIER WILLING AND ABLE TO PROVIDE A REQUESTED SERVICE.

As noted above, the Joint Board as a general matter concluded that wherever possible, competitive processes should govern. In line with this, the Joint Board recommended that

schools and libraries be "required to seek competitive bids for all services eligible for section 254(h) discounts." Recommended Decision at para. 539. The Joint Board seemingly pulled back on this requirement in its discussion relating to existing contracts, however, by stating:

"If the Commission permits schools and libraries to use the best negotiated contract rate for which they can bargain in the market as the pre-discount price to which a discount would apply, it would seem reasonable that such discount would also apply to contracts negotiated prior to the adoption of rules under Section 254(h). In both cases, schools and libraries with budgetary constraints have strong incentives to secure the lowest rates that they can as the pre-discount price, and the proposed discount methodology would apply a discount on that pre-discount rate. We recommend that the Commission not require any schools or libraries that had secured a low price on service to relinquish that rate simply to secure a slightly lower rate produced by including a large amount of federal support." Recommended Decision at para. 572.

ALTS is not certain precisely what the Joint Board means in paragraph 572. If it means that existing, effective contracts that schools or libraries have already negotiated will continue in effect upon adoption of the universal service rules, and that those schools or libraries would automatically receive discounts off the negotiated, legally effective rates contained in those contracts, ALTS and its members object strongly.

Such a rule would not and could not be competitively neutral. As a practical matter, schools and libraries would have little incentive to obtain service from any other supplier. A school that had been willing to sign a contract with an incumbent telco at price X would probably be so delighted at the prospect

of obtaining service at X minus 20-90 percent, that the telephone calls of the persons marketing competitive services would not even be returned. The inherent market advantage of the incumbent LECs would be increased significantly. In addition, of course, the public interest requires that any discount be available from the lowest available price. The only way to determine the lowest available price is to require schools and libraries to seek competitive bids. If the discount is not taken off the lowest available price, all carriers and ultimately the ratepayers will incur greater expense than they would otherwise.

At the same time ALTS sees no reason to disturb recent contracts that have been entered into pursuant to competitive bids. Therefore ALTS proposes that the Commission require that in order to obtain Section 254(h) discounts all schools with existing contracts that were not entered into pursuant to competitive bids be required to seek competitive bids for those services.

Related to the issue of competitive bids for service to schools and libraries is the issue of the eligibility of carriers to bid for service to schools and libraries. The Commission needs to make clear that any telecommunications carrier, whether or not found to be an eligible carrier under Section 214(e), may submit bids, and may obtain reimbursement from the universal service fund for service to schools and libraries. The eligible carrier requirements of Section 254 and 214(e) make sense only for universal service support for rural, insular, and high cost

areas. The entire purpose of providing efficient low cost services to schools and libraries would be defeated if carriers not otherwise found to be "eligible" under Section 214(e) were prevented from bidding on individual contracts for schools and libraries.

Finally, the requirement that schools obtain service through competitive bidding should include a requirement that bids for telecommunications services and Internet access be bid separately. If the services were not bid separately, joint marketers would have an unfair competitive advantage. This would also violate the general principle of competitive neutrality.

VIII. THE COMMISSION SHOULD NOT INCLUDE INSIDE WIRING FOR SCHOOLS AND LIBRARIES IN UNIVERSAL SERVICE MECHANISMS.

The members of ALTS are very much in favor of schools and libraries having access to advanced telecommunications services and the Internet and in are in favor of schools and libraries having the inside wiring necessary to accomplish such access. In fact, members of ALTS has been significantly involved in the Netday 1996 volunteer activities that have resulted in the wiring of thousands of classrooms around the country.⁹ However, ALTS believes that as a legal matter, universal service support is clearly limited to "telecommunications services" which is defined as meaning the "offering of telecommunications for a fee directly to the public." "Telecommunications" means the transmission

⁹ See, e.g., the Web page for Netday 1996 sponsored by Intermedia Communications (URL: www.netday96.icix.net).

between or among the points specified by the user, of information of the users choosing"

The provision of inside wiring is a detariffed, competitive offering involving facilities and equipment necessary for the provision of telecommunications service, but is not itself a telecommunications service under the 1996 Act. Therefore, it is not eligible for universal service support.¹⁰ In addition, the Commission must recognize the fact that today there are many non-carrier providers of inside wire. These providers would not be eligible to bid on inside wiring for schools and libraries as they are not eligible for universal service support.¹¹

In recommending that the Commission include inside wiring as eligible for universal service support the Joint Board relied upon Section 254(h)(2)(A) and legislative history that indicates that the Congress intended that the Commission adopt rules that enhance the provision of telecommunications to the "classrooms." The problem with the Joint Boards' analysis is that Section 254(h)(2)(A) does not mention discounts and the Commission may

¹⁰ Cf. P. Pitsch and A. Bresnahan, Common Carrier Regulation of Telecommunications Contracts and the Private Carrier Alternative, 48 Fed. Comm. L.J. 447, 451-52 ("[I]t appears from the definitions of 'telecommunications service' and 'telecommunications carrier' in the Telecommunications Act of 1996 that Congress has extended the common carrier classification . . . to assist in the identification of entities and services to be subject to the requirements of the new law.")

¹¹ While the Joint Board's Recommendation appears to extend the support to any provider of internal connections, (see para. 484) the Joint Board may not do so when the statute is clear. It is not competitively neutral to allow non-carriers to be eligible for Universal Service subsidies unless they are also required to contribute to such subsidies.

look to legislative history only when the statute is ambiguous. In this case, the statute is not ambiguous. The statute allows the Commission to provide universal service support for services. While the support of internal connections clearly enhance access to advanced telecommunications and information services and may be in the public interest, it was not contemplated by the 1996 Act and the Commission may not extent the scope of the Act.

Finally, ALTS is concerned about the total amount of discounts recommended for schools and libraries. ALTS has no independent knowledge of the amount of discount necessary to "ensure affordable access to and use of such services" by educational institutions and libraries. What concerns ALTS is the Joint Board's recommendation of a 20-90% discount does not appear to be based upon any concrete evidence that such discounts are necessary. While the Recommended Decision identifies a number of studies detailing the costs of providing services to schools and libraries, there is virtually no analysis of why the particular discounts chosen are appropriate. Such an analysis must be made before any discounts are allowed. Along these same lines, the Commission must justify the amount of any discount.

**IX. THE JOINT BOARD'S RECOMMENDATIONS
RELATING TO THE ADMINISTRATOR OF UNIVERSAL
SERVICE PROGRAMS SHOULD BE ADOPTED.**

The Joint Board recommended that the Commission appoint a universal service advisory board to designate a neutral, third party administrator. The Board also recommended that the chosen administrator must:

"(1) be neutral and impartial; (2) not advocate specific positions to the Commission on non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (3) [sic; should be (4)] not have a direct financial interest in the support mechanisms established by the Commission." (Recommended Decision at para. 830)

ALTS agrees with these recommendations. It is particularly important that the Commission adopt the third recommendation as it would not be possible for the administrator to be impartial and neutral unless it is also not aligned or associated with any particular industry segment or carriers. This is even more important if the Joint Board's recommendation requiring that schools and libraries be required to submit their requests for services to the Fund administrator is adopted by the Commission.

CONCLUSION

For the foregoing reasons ALTS respectfully requests that the Commission adopt the recommended decision with the changes and additions set forth above.

Respectfully submitted,

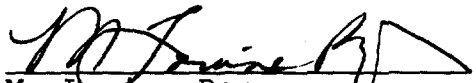
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I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served December 19, 1996, on the following persons by First-Class Mail or by hand service, as indicated.


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